

109TH CONGRESS
2D SESSION

S. 2608

To ensure full partnership of small contractors in Federal disaster reconstruction efforts.

IN THE SENATE OF THE UNITED STATES

APRIL 7, 2006

Ms. SNOWE (for herself and Mr. VITTER) introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

A BILL

To ensure full partnership of small contractors in Federal disaster reconstruction efforts.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Small Business Part-
5 ners in Reconstruction Act of 2006”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

8 (1) the terms “Administration” and “Adminis-
9 trator” mean the Small Business Administration
10 and the Administrator thereof, respectively;

1 (2) the term “small business concern” has the
2 same meaning as in section 3 of the Small Business
3 Act (15 U.S.C. 632); and

4 (3) the term “small business concern owned
5 and controlled by socially and economically disadvan-
6 taged individuals” has the same meaning as in sec-
7 tion 8 of the Small Business Act (15 U.S.C. 637).

8 **SEC. 3. SMALL BUSINESS PROCUREMENT FLEXIBILITIES;**
9 **GOVERNMENT-WIDE GUIDANCE.**

10 Section 5 of the Small Business Act (15 U.S.C. 634)
11 is amended by adding at the end the following:

12 “(i) SMALL BUSINESS EMERGENCY PROCUREMENT
13 FLEXIBILITIES; GOVERNMENT-WIDE GUIDANCE.—

14 “(1) DEFINITION.—In this subsection, the term
15 ‘Guidelines’ means the guidelines entitled ‘Emer-
16 gency Procurement Flexibilities (A Framework for
17 Responsive Contracting & Guidelines for Using Sim-
18 plified Acquisition Procedures)’ issued by the Office
19 of Federal Procurement Policy of the Office of Man-
20 agement and Budget on May 30, 2003, or any suc-
21 cessor thereto.

22 “(2) OFFICE OF FEDERAL PROCUREMENT POL-
23 ICY.—In order to enable the Federal Government to
24 purchase goods and service quickly and efficiently in
25 times of disaster, contingency, or other emergency,

1 while promoting small business concern utilization,
2 the Administrator for Federal Procurement Policy
3 shall—

4 “(A) ensure that the Guidelines continue
5 to strongly encourage that the Federal Govern-
6 ment utilize the small business procurement
7 flexibilities in this Act;

8 “(B) ensure that the Guidelines fully ad-
9 dress all available small business procurement
10 flexibilities (including flexibilities authorized for
11 small business concerns owned and controlled
12 by socially and economically disadvantaged indi-
13 viduals under section 8(a), HUBZone small
14 business concerns, and small business concerns
15 owned and controlled by service-disabled vet-
16 erans);

17 “(C) periodically revise, update, or modify
18 the Guidelines;

19 “(D) publish the Guidelines, as updated to
20 comply with this paragraph, in the Federal
21 Register; and

22 “(E) consult with the Administrator on
23 any changes to the Guidelines.

24 “(3) ADMINISTRATION.—The Administrator
25 shall, with regard to the Guidelines—

“(A) develop and conduct ongoing government-wide training on small business emergency procurement flexibilities (including flexibilities authorized for small business concerns owned and controlled by socially and economically disadvantaged individuals under section 8(a), HUBZone small business concerns, and small business concerns owned and controlled by service-disabled veterans); and

“(B) designate not fewer than 1 official to provide advice and assistance to the Office of Federal Procurement Policy and other Federal agencies on the use of small business procurement flexibilities in times of disaster, contingency, or other emergency.”.

SEC. 4. PAPERWORK RECIPROCITY FOR SMALL DISASTER CONTRACTORS.

Not later than 30 days after the date of enactment of this Act, the Administrator shall ensure that all eligible small business concerns receive the full benefit of reciprocity in certifications between Federal and Federally-funded contracting programs for small business concerns owned and controlled by socially and economically disadvantaged individuals.

1 **SEC. 5. HURRICANE KATRINA AND RITA SMALL BUSINESS**
 2 **CONTRACTING DATA.**

3 Not later than 30 days after the date of enactment
 4 of this Act, the Administrator for Federal Procurement
 5 Policy and the Administrator shall ensure that the Federal
 6 Procurement Data System contains comprehensive Gov-
 7 ernment-wide data on small business participation in con-
 8 tracting related to Hurricane Katrina of 2005 or Hurri-
 9 cane Rita of 2005.

10 **SEC. 6. DISASTER AREA HUBZONES.**

11 Section 3(p)(1) of the Small Business Act (15 U.S.C.
 12 632(p)(1)) is amended—

- 13 (1) in subparagraph (D), by striking “or”;
- 14 (2) in subparagraph (E), by striking the period
- 15 and inserting “; or”; and
- 16 (3) by adding at the end the following:
- 17 “(F) any area affected by Hurricane
- 18 Katrina of 2005 or Hurricane Rita of 2005, for
- 19 such time or in such geographic area as des-
- 20 ignated by the Administrator.”.

21 **SEC. 7. DISASTER CONTRACTING OUTREACH PROGRAMS**
 22 **FOR SMALL BUSINESSES.**

23 (a) IN GENERAL.—Not later than 90 days after the
 24 date of enactment of this Act, the Administrator shall es-
 25 tablish a contracting outreach and technical assistance
 26 program for small business concerns that—

1 (1) had a primary place of business, or other
2 significant presence, in the area affected by Hurri-
3 cane Katrina of 2005 or Hurricane Rita of 2005, as
4 designated by the Administrator under section
5 7(b)(2) of the Small Business Act, beginning on the
6 date that is 60 days before the date of that designa-
7 tion by the Administrator; or

8 (2) have a primary place of business, or other
9 significant presence, in the area affected by Hurri-
10 cane Katrina of 2005 or Hurricane Rita of 2005, as
11 designated by the Administrator under section
12 7(b)(2) of the Small Business Act, during the period
13 beginning on the date of that designation and end-
14 ing on the date that is 5 years after the date of that
15 designation.

16 (b) ADMINISTRATOR ACTION.—The Administrator
17 may fulfill the requirement of subsection (a) by acting
18 through—

19 (1) the Administration;

20 (2) the Federal agency small business officials
21 designated under section 15(k)(1) of the Small Busi-
22 ness Act (15 U.S.C. 644(k)(1)); and

23 (3) any Federal, State, or local government en-
24 tity, higher education institution, Procurement Tech-
25 nical Assistance Center, or private nonprofit organi-

1 zation that the Administrator determines is proper,
2 upon conclusion of a memorandum of understanding
3 or assistance agreement, as appropriate, with the
4 Administrator.

5 **SEC. 8. SMALL BUSINESS BONDING THRESHOLD.**

6 (a) IN GENERAL.—Except as provided in subsection
7 (b), and notwithstanding any other provision of law, for
8 any procurement related to Hurricane Katrina of 2005 or
9 Hurricane Rita of 2005, the Administrator may, upon
10 such terms and conditions as the Administrator may pre-
11 scribe, guarantee and enter into commitments to guar-
12 antee any surety against loss resulting from a breach of
13 the terms of a bid bond, payment bond, performance bond,
14 or bonds ancillary thereto, by a principal on any total work
15 order or contract amount at the time of bond execution
16 that does not exceed \$5,000,000.

17 (b) INCREASE OF AMOUNT.—Upon request of the
18 head of any Federal agency other than the Administration
19 involved in reconstruction efforts in response to Hurricane
20 Katrina of 2005 or Hurricane Rita of 2005, the Adminis-
21 trator may guarantee and enter into a commitment to
22 guarantee any security against loss under subsection (a)
23 on any total work order or contract amount at the time
24 of bond execution that does not exceed \$10,000,000.

1 **SEC. 9. FAIR SMALL BUSINESS PARTICIPATION.**

2 In order to facilitate the maximum practicable par-
3 ticipation of small business concerns in activities related
4 to relief and recovery from Hurricane Katrina of 2005 and
5 Hurricane Rita of 2005, the Administrator and the head
6 of any Federal agency making procurements related to the
7 aftermath of Hurricane Katrina of 2005 or Hurricane
8 Rita of 2005, shall set a goal of awarding to small busi-
9 ness concerns not less than 30 percent of amounts ex-
10 pended for prime contracts and not less than 40 percent
11 of amounts expended for subcontracts on procurements by
12 such agency related to the aftermath of Hurricane Katrina
13 of 2005 or Hurricane Rita of 2005, respectively.

14 **SEC. 10. PROTECTION OF SMALL BUSINESS RESERVATION.**

15 Section 15(j) of the Small Business Act (15 U.S.C.
16 644(j)) is amended by adding at the end the following:
17 “(4) For any contracts involving the use of the spe-
18 cial emergency procurement authority under section
19 32A(c) of the Office of Federal Procurement Policy Act
20 (41 U.S.C. 428a(c)), the dollar ceiling of the small busi-
21 ness reservation established in paragraph (1) shall be ad-
22 justed to match the applicable amount of the simplified
23 acquisition threshold.”.

1 **SEC. 11. SMALL BUSINESS MULTIPLE-AWARD DISASTER**
2 **CONTRACTS.**

3 (a) IN GENERAL.—The Administrator and the Ad-
4 ministrator for Federal Procurement Policy shall ensure
5 that the Federal Government establishes and maintains
6 multiple-award contracts with small business concerns of
7 all categories on a nationwide and regional basis for the
8 purpose of conducting or supporting Federal disaster re-
9 covery efforts.

10 (b) REPORT.—At the end of each fiscal year, the Ad-
11 ministrator and the Administrator for Federal Procure-
12 ment Policy shall submit to Committee on Small Business
13 and Entrepreneurship of the Senate and the Committee
14 on Small Business of the House of Representatives a re-
15 port describing the terms, conditions, and status of the
16 contracts described in subsection (a) awarded during the
17 preceding fiscal year.

18 **SEC. 12. TRANSPARENCY IN DISASTER SUBCONTRACTING.**

19 The Administrator and the head of each executive
20 agency awarding recovery and reconstruction contracts re-
21 lated to Hurricane Katrina of 2005 or Hurricane Rita of
22 2005 shall ensure that each such contract for which a
23 small business subcontracting plan is required by law or
24 contract terms contains a clause requiring the posting of
25 subcontracting opportunities on the SUB-Net database es-
26 tablished by the Administration under section 8(e) of the

1 Small Business Act (15 U.S.C. 637(e)), or any successor
2 thereto.

3 **SEC. 13. PROTECTION OF SMALL BUSINESS SUBCON-**
4 **TRACTING.**

5 Section 8(d)(4)(D) of the Small Business Act (15
6 U.S.C. 637(d)(4)(D)) is amended—

7 (1) by striking “(D) No contract” and inserting
8 the following:

9 “(D) SMALL BUSINESS PARTICIPATION.—

10 “(i) IN GENERAL.—No contract”; and

11 (2) by adding at the end the following:

12 “(ii) EMERGENCY PROCUREMENTS.—

13 “(I) IN GENERAL.—For any con-
14 tract which otherwise meets the re-
15 quirements of this subsection, and
16 which involves the use of special emer-
17 gency procurement authority under
18 section 32A(c) of the Office of Fed-
19 eral Procurement Policy Act (41
20 U.S.C. 428a(c)), the subcontracting
21 plan required under this subsection
22 shall be negotiated as soon as is prac-
23 ticable, but not later than 30 days
24 after the date on which the contract is
25 awarded.

1 “(II) PAYMENT.—Not greater
 2 than 50 percent of the amounts due
 3 under any contract described in sub-
 4 clause (I) may be paid, unless a sub-
 5 contracting plan compliant with this
 6 subsection is negotiated by the con-
 7 tractor.”.

8 **SEC. 14. CONTRACTING PRIORITY FOR LOCAL SMALL BUSI-**
 9 **NESSES.**

10 Section 15(d) of the Small Business Act (15 U.S.C.
 11 644(d)) is amended—

12 (1) by striking “(d) For purposes” and insert-
 13 ing the following:

14 “(d) CONTRACTING PRIORITIES.—

15 “(1) IN GENERAL.—For purposes”; and

16 (2) by adding at the end the following:

17 “(2) DISASTER CONTRACTING PRIORITY IN
 18 GENERAL.—The Administrator shall designate any
 19 disaster area as an area of concentrated unemploy-
 20 ment or underemployment, or a labor surplus area
 21 for purposes of paragraph (1).

22 “(3) LOCAL SMALL BUSINESSES.—

23 “(A) IN GENERAL.—The Administrator
 24 shall give priority in the awarding of contracts

1 and the placement of subcontracts for disaster
2 relief to local small business concerns.

3 “(B) OTHER AGENCIES.—The head of
4 each executive agency shall give priority in the
5 awarding of contracts and the placement of
6 subcontracts for disaster relief to local small
7 business concerns, by using, as appropriate—

8 “(i) preferential factors in evaluations
9 of contract bids and proposals;

10 “(ii) competitions restricted to local
11 small business concerns, where there is a
12 reasonable expectation of receiving com-
13 petitive, reasonably priced bids or pro-
14 posals from not fewer than 2 local small
15 business concerns;

16 “(iii) requirements of preference for
17 local small business concerns in subcon-
18 tracting plans; and

19 “(iv) assessments of liquidated dam-
20 ages and other contractual penalties, in-
21 cluding contract termination.

22 “(C) OTHER DISASTER ASSISTANCE.—Pri-
23 ority shall be given to local small business con-
24 cerns in the awarding of contracts and the
25 placement of subcontracts for disaster relief in

1 any Federal procurement and any procurement
2 by a State or local government made with Fed-
3 eral disaster assistance funds.

4 “(4) DEFINITIONS.—In this subsection—

5 “(A) the term ‘declared disaster’ means
6 Hurricane Katrina of 2005, Hurricane Rita of
7 2005, or any other disaster, as designated by
8 the Administrator;

9 “(B) the term ‘disaster area’ means any
10 State or area affected by a declared disaster, as
11 determined by the Administrator;

12 “(C) the term ‘executive agency’ has the
13 same meaning as in section 105 of title 5,
14 United States Code; and

15 “(D) the term ‘local small business con-
16 cern’ means a small business concern that—

17 “(i) on the date immediately pre-
18 ceding the date on which a declared dis-
19 aster occurred—

20 “(I) had a principal office in the
21 disaster area for such declared dis-
22 aster; and

23 “(II) employed a majority of the
24 workforce of such small business con-

1 cern in the disaster area for such de-
2 clared disaster; and

3 “(ii) is capable of performing a sub-
4 stantial proportion of any contract or sub-
5 contract for disaster relief within the dis-
6 aster area for such declared disaster, as
7 determined by the Administrator.”.

8 **SEC. 15. RELIEF FROM TEST PROGRAM.**

9 Section 711(d) of the Small Business Competitive
10 Demonstration Program Act of 1988 (15 U.S.C. 644 note)
11 is amended—

12 (1) by striking “The Program” and inserting
13 the following:

14 “(1) IN GENERAL.—Except as provided in para-
15 graph (2), the Program”; and

16 (2) by adding at the end the following:

17 “(2) EXCEPTION.—The Program shall not
18 apply to any contract related to relief or reconstruc-
19 tion from Hurricane Katrina of 2005 or Hurricane
20 Rita of 2005.”.

○